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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re TONI S. et al., Persons Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

D.W.,

Defendant and Appellant.

D066232

(Super. Ct. No. J518954A-B)

APPEAL from orders of the Superior Court of San Diego County, Kenneth J.

Medel, Judge. Affirmed.

Christopher Blake, under appointment by the Court of Appeal, for Defendant and
Appellant.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County
Counsel, and Paula J. Roach, Deputy County Counsel, for Plaintiff and Respondent.

D.W. appeals juvenile court orders placing her daughter, Paris D., with Paris's father, I.D., at his home in Georgia and terminating jurisdiction. She contends the court erred by placing Paris with I.D. without taking appropriate steps to assure her safety and protection. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

Paris was born to D.W. and I.D. in 2003 in San Diego. In 2012, I.D. returned to his home state of Georgia, leaving D.W., Paris and Paris's older half sister, Toni S., in San Diego. (Toni is not a subject of this appeal.) I.D. kept in contact with Paris, calling her about once each week, and he twice returned to San Diego for visits. Paris spent the summer of 2013 in Georgia with I.D.

The San Diego County Health and Human Services Agency (the Agency) investigated several referrals concerning the family between 2011 and 2013. I.D. was involved in the two referrals in 2011 that involved domestic violence. The September 2011 domestic violence allegations were found to be inconclusive. During an incident in November 2011, D.W. was drunk and punched I.D. D.W. was arrested, but the Agency closed the case as inconclusive. Subsequent referrals between January 2012 and October 2013 did not involve I.D., but concerned D.W.'s alcohol abuse, and Toni's mental health needs and D.W.'s failure to follow up with services for her.

In April 2014, the Agency petitioned to bring Paris and Toni within juvenile court jurisdiction, alleging they were at risk of harm because D.W. abused alcohol, pushed Toni, leaving a bruise, was unwilling to provide for Toni's mental health needs and

engaged in inappropriate sexual behavior in front of Paris and Toni. Paris's petition also alleged I.D. had not protected Paris from D.W.

Paris told the social worker about D.W.'s drinking and her sexual conduct in the home. She said she felt unsafe and sad and would prefer to live with I.D.

At the detention hearing, I.D. appeared telephonically and asked that Paris be placed with him. The court ordered an evaluation of I.D. and of relatives and others interested in placement.

I.D.'s criminal history includes a 1986 conviction of possession of marijuana and a 1997 conviction of theft. He had two arrests in 2006 for being under the influence of a controlled substance and an arrest in 2011 for battery on a spouse. I.D. said D.W. drank every day and her drinking worsened over time. He was aware she drank enough to pass out and called the girls names when she was drunk, and he had seen her hit Paris. He said he asked her to go to Alcoholics Anonymous meetings with him, but she declined, so he went by himself. D.W. said I.D. used cocaine and he also had a gambling problem. She was concerned about placing Paris with him, but said she would consider it if he were clean and safe.

I.D. admitted he began using cocaine in 1986, but said he had had multiple periods of sobriety and had been completely sober since October 2011. He reported he had been going to weekly Narcotics Anonymous (NA) meetings since moving to Georgia and was working with a sponsor. He said he had been trying to prepare for Paris to live with him, but was afraid D.W. would call the police if he tried to take Paris to Georgia. I.D. lived with his girlfriend, A.S., and had the support of relatives nearby. A.S. said she and I.D.

had known each other for many years and had lived together for a year. She said I.D. and Paris had a close relationship, and she and Paris had enjoyed spending time together during the summer when Paris visited. Paris said she had a good time when she visited I.D. and she wanted to live with him.

I.D.'s NA sponsor said I.D. was clean and sober, and they talked together every week. I.D. said he had spoken with teachers at the school Paris would attend if she were placed with him, had located recreation centers she could go to and had looked into insurance and counseling for her. He said he would investigate parenting classes for himself. Paris's adult half sister, E.M., expressed concern about Paris living with I.D.

At the jurisdictional hearing on June 5, 2014, the court assumed jurisdiction. As to I.D., it found true allegations he had failed to protect Paris from D.W.'s alcoholism since he was aware D.W. had a drinking problem and that she could be very abusive toward Paris, but he moved to Georgia without addressing these issues.

The social worker recommended Paris be placed with I.D. and jurisdiction terminated. She based the recommendation on the facts that Paris wanted to live with I.D., there was no indication I.D. was using drugs, he had had a negative drug test and had produced signatures of his attendance at NA meetings, and an inspection of his home by Georgia authorities was positive.

At the hearing on June 5, 2014, the Agency, Paris and I.D. requested the court place Paris with I.D. D.W. opposed removing Paris from her care and argued I.D.'s drug use history constituted detriment to placement or at least required the court to continue

jurisdiction. After considering the evidence and argument by counsel, the court ordered Paris placed with I.D. and continued the case.

Subsequently, I.D. came to San Diego to take Paris to Georgia. The social worker reported he appeared healthy, clean and free from the influence of drugs, and he had had another negative drug test. On July 20, 2014, I.D. and Paris flew to Georgia. Once there, Paris told the social worker she was currently at her uncle's home and she felt safe. At the hearing on July 22, the court issued custody orders and terminated jurisdiction.

DISCUSSION

D.W. contends the court erred by ordering Paris placed with I.D. in Georgia without taking appropriate steps to assure her safety. She argues I.D. was an "offending parent" against whom substantial allegations of parental neglect had been sustained.

Welfare and Institutions Code section 361.2, subdivision (a) provides that when a court orders removal of a child from a custodial parent under section 361, if the parent with whom the child was not living requests custody, the court must place the child with the noncustodial parent unless it finds such placement would be detrimental to the safety, protection, or physical or emotional well-being of the child. (All further statutory references are to the Welfare and Institutions Code.)

There is a split of authority regarding whether section 361.2 applies to both an offending, noncustodial parent and a nonoffending, noncustodial parent. In *In re V.F.* (2007) 157 Cal.App.4th 962, 969, when considering a noncustodial, incarcerated parent who desired custody, this court ruled, "the court must proceed under section 361.2 [S]ection 361.2 does not distinguish between an offending and nonoffending parent, and

the court applies section 361.2 without regard to the characterization of the parent as offending or nonoffending." (*Id.* at pp. 965-966.) In *In re Nickolas T.* (2013) 217 Cal.App.4th 1492, 1505-1506 (*Nickolas T.*), this court ruled if a noncustodial parent's conduct has contributed to the current dependency proceeding, it can be considered as evidence of detriment under section 361.2, subdivision (a), but the statute does not require the court, before assessing whether placement with the noncustodial parent will be detrimental to the child, to first determine whether that parent is a " 'nonoffending noncustodial parent' " or an " 'offending, noncustodial parent.' " (*Nickolas T.*, at p. 1505.) (Contra, *In re John M.* (2013) 217 Cal.App.4th 410, 420 [although the word "nonoffending" is not found in the text of section 361.2, a parent must be nonoffending before he or she is entitled to consideration under section 361.2].)

We find the reasoning of *In re V.F.* and *Nickolas T.* to be the better view. As noted in *Nickolas T.*, the term " 'nonoffending' " does not appear in the text of section 361.2. (*Nickolas T.*, *supra*, 217 Cal.App.4th at pp. 1504, 1505.) Under section 361.2, subdivision (a), the court focuses on the effect placement with the noncustodial parent will have on the child's safety, protection and well-being. If the noncustodial parent was in some way responsible for the conditions that brought the child within section 300, these facts may constitute evidence of detriment, but the statute does not require the court, before assessing whether placement with the noncustodial parent would be detrimental, to first determine whether the parent is an offending or nonoffending parent. (*Nickolas T.*, at p. 1505.) We thus proceed under section 361.2, subdivision (a), and consider I.D.'s role in contributing to the dependency proceeding concerning Paris and

assess whether it would be detrimental to her safety, protection or well-being to place her with him.

Under section 361.2, subdivision (b), if the court determines placement with the previously noncustodial parent is not detrimental, the court then decides whether there is a need for ongoing supervision. If there is no need for ongoing supervision, the court grants custody to the noncustodial parent, provides reasonable visitation to the previously custodial parent, and terminates jurisdiction. (§ 361.2, subd. (b)(1).) If the court terminates jurisdiction, it is contemplated that any further proceedings will take place in the family court. (*In re J.S.* (2011) 196 Cal.App.4th 1069, 1077.) Alternatively, the court may order that the noncustodial parent assume custody subject to juvenile court jurisdiction and require a home visit within three months. (§ 361.2, subd. (b)(2).)

The reviewing court applies the substantial evidence test when reviewing whether it was detrimental to the child to place him or her with the previously noncustodial parent. (*Nickolas T.*, *supra*, 217 Cal.App.4th at p. 1507.)

D.W. has not shown a lack of substantial evidence to support the court's finding that placing Paris with I.D. would not be detrimental to her safety, protection or physical or emotional well-being, and continuing judicial oversight was not necessary.

The court considered the evidence, indicating it had reviewed all of the reports before finding there would not be detriment. The court found I.D.'s home was appropriate and Paris had stayed there with no reported problems during the summer of 2013. Paris had enjoyed spending time with relatives who lived in the neighborhood. A.S., who lived with I.D., had a long-term stable job and was happy to have Paris live

with them. Although I.D. had failed to protect Paris by leaving her with D.W. when he moved to Georgia, after Paris was taken into protective custody, he moved quickly to request custody and to remedy his past failures and become a protective parent for her.

D.W. has not shown that a full investigation under the Interstate Compact for the Placement of Children was necessary. I.D. had continued his relationship with Paris after he moved to Georgia. He spoke with her on the telephone every week and twice had returned to San Diego for visits before the case began. Paris was consistent in saying she would prefer to live with I.D. She spent the summer of 2013 with him and reported he was consistently available to her, they participated in many activities together and she had a good time. When her return to San Diego was delayed, he enrolled her in school and picked her up at the bus stop each day. He prepared for Paris being placed with him by meeting with her future teachers at her elementary school, looking into activities for her and investigating insurance and counseling for her. Her bedroom was ready for her to move into at his home.

The court stated although I.D. admitted he had struggled with cocaine use off and on from 1986 to 2011, he had had multiple periods of sobriety and had been completely sober since 2011. The court also noted I.D.'s NA sponsor confirmed I.D. had remained sober, and the sponsor was committed to protecting Paris if I.D. had a relapse. The sponsor said they had discussions several times each week and I.D. had never appeared to be under the influence.

The court had considerable evidence that I.D. had been maintaining sobriety. From the onset of the case, he was available to the social worker and the court. He was

interviewed by two San Diego social workers and one Georgia child protective services worker, and he attended the juvenile court hearings by telephone. There was never any indication he was under the influence of drugs. A.S. was aware of I.D.'s previous substance abuse, but reported no signs that he continued to use drugs. I.D. said his sobriety date was October 10, 2011. He said he had been attending NA meetings and, when asked, began collecting signatures to document his attendance. He had two negative drug tests, one in Georgia and one in San Diego.

D.W. has not shown continued court jurisdiction was necessary. There was no indication I.D. was abusing substances and, thus, no need to continue court jurisdiction to allow for drug testing. The Agency had conducted a thorough investigation of I.D.'s circumstances and Georgia authorities had performed a courtesy assessment. Before the court terminated jurisdiction, Paris and I.D. went to Georgia, and Paris said she felt safe with I.D. and was happy and had everything she needed. Substantial evidence supports the court's order placing Paris with I.D. in Georgia and terminating jurisdiction.

DISPOSITION

The orders are affirmed.

McINTYRE, J.

WE CONCUR:

MCDONALD, Acting P. J.

O'ROURKE, J.